

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER RULING
DECISION NO. 99 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of the
Reserve Account of:

SEARS, ROEBUCK & COMPANY
(Employer-Appellant)

PRECEDENT
RULING DECISION
NO. P-R-371

FORMERLY RULING DECISION NO. R-99

Account No.

CHARLES W. CHANDLER
(Claimant)
S.S.A. No.

Referee's Decision
No. LA-R-2345

STATEMENT OF FACTS

The claimant had had two periods of employment with this employer. The first period was from October 4, 1951 to January 15, 1952; and the second period was from November 25, 1952 to January 15, 1953. Following the second termination, the claimant for the first time (on January 28, 1953) had registered for work with the Department of Employment and filed a claim for unemployment insurance benefits. On the same date and in connection with such claim of January 28, 1953, the department mailed to the employer (as the claimant's last employer) a Notice of Claim Filed (DE 1101-C). The employer did not protest the claim or submit any information within the 10-day period following the date such notice was mailed.

On February 11, 1953, the department mailed to the employer a Notice of Computation of Claim (DE 1545). On February 12, 1953, the appellant submitted certain information concerning the claimant's separations from employment and requested a ruling under section 39.1 of the Unemployment Insurance Act [now sections 1030-1032 of the Unemployment Insurance Code]. On April 9, 1953, the department issued a notice of ruling to the effect that,

since the employer had not submitted such information within the 10-day period following January 28, 1953, the employer was not entitled to a ruling on the merits of the claimant's termination of employment.

The employer appealed to a referee who, in Decision No. LA-58496, ruled that the employer was entitled to ruling with respect to the termination of January 15, 1952 and held that the claimant voluntarily left his employment without good cause within the meaning of section 39.1 of the act [now sections 1030-1032 of the Unemployment Insurance Code]. No appeal was filed from such decision and it has become final.

Also on April 9, 1953, the department issued a determination disqualifying the claimant for benefits for a period of five weeks following January 28, 1953 on the ground that, under section 58(a)(2) of the act [now section 1256 of the Unemployment Insurance Code], the claimant had been discharged for misconduct in connection with his most recent work. The claimant did not appeal from such determination.

The claimant established another benefit year on January 28, 1954, at which time the employer received a Notice of Computation (DE 1545) and, within the statutory 10-day time limit thereafter, submitted information regarding the claimant's separation on January 15, 1953 and requested a ruling under section 1030 of the code. The department, on March 26, 1954, issued a denial of ruling which stated: "No ruling will be issued in response to your letter because a ruling with respect to this particular termination was previously made on April 9, 1953, and subsequently appealed -- Referee's Decision LA-58496 -- Reference Benefit Decision No. 6074." The employer on March 31, 1954 appealed to a referee from such denial of ruling. From the referee's adverse decision, the employer on June 6, 1955 appealed to the Appeals Board.

The employer contends:

1. That the department was required to issue a ruling as to the cause of the termination of the claimant's employment on January 15, 1953 at the time that the employer submitted timely information under section 1030 of the code with respect to the benefit year established January 28, 1954.

2. That the ruling must be based on the determination under section 58(a)(2) of the act [now section 1256 of the Unemployment Insurance Code], which the department made with respect to the separation on January 15, 1953 and which related to the benefit year established on January 28, 1953 and which became final in the absence of any appeal by the claimant.

3. That, since the claimant was determined to have been discharged for misconduct under section 58(a)(2) of the act [now section 1256 of the Unemployment Insurance Code], the ruling must hold that the employer is entitled to be relieved of charges for any benefits paid to the claimant.

REASONS FOR DECISION

Section 39.1 of the act [now sections 1030-1032 of the Unemployment Insurance Code] provided in pertinent part as follows:

"Sec. 39.1 [now sections 1030-1032 of the Unemployment Insurance Code]. Any employer who is entitled under Section 67 [now section 1327 of the Unemployment Insurance Code] to receive notice of the filing of a new or additional claim or notice of computation may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work. The department shall consider such facts together with any information in its possession and promptly issue to the employer its ruling as to the cause of the termination of the claimant's employment. Appeals may be taken from said rulings in the same manner as appeals from determinations on benefit claims."

This section of the act has heretofore received our attention; and, in view of their citation by the employer, we will review two of those decisions.

In Benefit Decision No. 5924, the claimant had resigned from his employment on September 19, 1951 and had registered for work and filed an additional claim on

September 21, 1951. Since the employer did not file any disqualifying information or request a ruling at that time, the department determined that the claimant had good cause for leaving his work and was not subject to disqualification under section 58(a)(1) of the act [now section 1256 of the Unemployment Insurance Code]; but a copy of this determination was not sent to the employer. On February 1, 1952, the claimant established a second benefit year; and the employer filed a timely protest and request for a ruling under section 39.1 of the act [now sections 1030-1032 of the Unemployment Insurance Code]. The claimant had not appealed from the department's original determination that he had good cause for leaving his work. We held that, since the employer had failed to submit any facts upon receipt of the notice of additional claim filed September 21, 1951, the employer was not entitled to notice of the determination made by the department and was not entitled to appeal therefrom; and, such being the case, such determination had finally disposed of the issue as to whether the claimant had voluntarily left his work with good cause. We further held that, since the employer was the claimant's last employer prior to the claim filed on February 1, 1952, the employer was entitled to file a protest to the payment of benefits under that claim and was entitled to a determination on that claim as to the eligibility of the claimant but that the issue of the claimant's voluntary leaving had been conclusively determined upon the filing of the additional claim on September 21, 1951 and the claimant was therefore not subject to disqualification. We then held that the employer, having submitted timely information to the department with respect to the claim filed on February 1, 1952, was entitled to a ruling under section 39.1 [now sections 1030-1032 of the Unemployment Insurance Code] and held that such ruling should have been to the effect that it had theretofore been finally determined that the claimant had voluntarily left his work on September 19, 1951 with good cause and, therefore, the account of the employer would not be relieved of charges for any benefits paid to the claimant.

In Benefit Decision No. 6089 (being also Ruling Decision No. R-71), the claimant had resigned his employment on February 10, 1951 and, on February 19, 1951, had registered for work and filed his claim for benefits. Notice of the filing of the claim was mailed to the employer on the same date that the claim was filed. On March 8, 1951, the department issued a determination that the claimant was subject to disqualification on the ground that he had left his most recent work voluntarily without good cause within the meaning of section 58(a)(1) of the

act [now sections 1256 of the Unemployment Insurance Code]. The claimant filed a timely appeal from such determination. On March 3, 1952, the claimant filed a new claim for benefits; and a notice of computation of the claim was mailed by the department to the employer who was then the base period employer but not the claimant's last employer. Within 10 days following receipt of the notice of computation, the employer informed the department that the claimant had voluntarily left its employ without good cause and requested a ruling. On April 9, 1952, the department issued a ruling. In that case, we held that, since the employer had submitted information in accordance with section 39.1 of the act [now sections 1030-1032 of the Unemployment Insurance Code] in connection with the claim filed March 3, 1952, it was entitled to a ruling to the effect that the claimant did not have good cause for leaving his work under sections 58(a)(1) or 39.1 of the act [now sections 1256 and 1030-1032 of the Unemployment Insurance Code] and the employer was entitled to be relieved of charges for any benefits paid to the claimant.

In Ruling Decision No. R-82, the claimant established a benefit year by filing a claim for disability benefits on April 4, 1953. Notice of the filing of the claim was mailed to the employer on May 22, 1953; and the employer submitted no information upon receipt of such notice. On October 27, 1953, the claimant filed another claim for benefits; and, on November 20, 1953, a notice of amended computation was mailed to the employer as a base period employer, in response to which the employer, on November 30, 1953, submitted information to the department and requested a ruling. On December 7, 1953, the department denied a ruling to the employer. In that case, we held:

"Considered in the light of the above precedents and statutory provisions, we are urged by the employer herein that he be permitted to disregard his duty as a last employer under the act when he occupied that position upon receiving a notice of disability claim filed following a termination of employment and that he now be permitted to file pertinent information as a base period employer. Clearly, this position is contrary to legislative enactment. Having failed in its duty as a last employer, it cannot now take advantage of its position as a base period employer and avail itself of a right which it had previously waived by its

negligence. Therefore, we conclude, the employer is not entitled to a ruling with reference to the termination of the claimant which occurred on March 28, 1953."

We consider that Benefit Decisions Nos. 5924 and 6089 are distinguished on their facts from Ruling Decision No. R-82. Although Ruling Decision No. R-82 was primarily a case involving unemployment compensation disability benefits, the question turned upon the proper construction of the unemployment insurance provisions which controlled the matter at that time, so such decision is applicable to the case now before us. Accordingly, we hold that, since this employer had neglected its duty as a last employer, its status as a base period employer did not entitle it to a ruling with respect to the benefit year established on January 28, 1954.

Although it is true that the employer's account will not be charged for any benefits covered by the department's disqualifying determination with respect to the claimant's separation on January 15, 1953, that fact does not entitle the employer to a ruling and does not relieve its account for any charges other than those for the five weeks during which the claimant was disqualified for benefits by the department's determination.

DECISION

The referee's decision is affirmed. The employer is not entitled to a ruling on the merits of the claimant's separation from its employment.

Sacramento, California, November 10, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Ruling Decision No. 99 is hereby designated as Precedent Decision No. P-R-371.

Sacramento, California, December 1, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES